STATE OF MICHIGAN

COURT OF APPEALS

ROBERT BROMLEY, as Personal Representative of the Estate of GLADYS BROMLEY, ROBERT BROMLEY and JAMES BROMLEY,

Plaintiffs-Appellants,

v

CITY OF ROYAL OAK POLICE DEPARTMENT, CHIEF OF POLICE MELVIN JOHNSON and POLICE OFFICER POLAR,

Defendants-Appellees.

UNPUBLISHED
August 25, 1998

No. 199732
Oakland Circuit Court
LC No. 96-514202 NO

Before: Sawyer, P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order granting summary disposition for defendants pursuant to MCR 2.116(C)(7), (8) and (10). We affirm.

Plaintiffs claim arose out of the death of plaintiff's decedent from hypothermia on February 20, 1993. Decedent was a 99-year-old resident of the City of Royal Oak who would call the Royal Oak Police Department several times a day complaining of a variety of problems. The vast majority of these calls involved complaints that the man next door was shaking her house with a large machine or that he was pouring heat into her bed. Although the police initially responded to her calls, eventually the police dispatchers would only send an officer to investigate when the complaint was different than the majority of the calls. In addition, decedent's calls of smoke in her home initially resulted in the fire department dispatching its equipment. However, after several false fire alarms, the fire department requested a police officer be dispatched to investigate the call. If a fire was present, the squad car would contact the fire department and the fire department would send their equipment. This procedure was implemented on February 9, 1993, and only applied to smoke complaints.

The Royal Oak police records show that decedent called 107 times from March 18, 1991 through March 27, 1991; 8 times from June 7, 1991 through June 19, 1991; 15 times from June 22,

1991 through July 6, 1991; 34 times from July 7, 1991 through October 3, 1991; 72 times

from December 5, 1991 through January 11, 1992. Of these calls, only one call, on October 5, 1992, related to heat. No evidence was presented to support plaintiffs' allegation that decedent called subsequent to October 5, 1992 with complaints regarding her furnace, smoke, odors or lack of heat.

Decedent had a service contract with Marathon Fuel to repair and maintain her oil based furnace. Robert Bromley, decedent's grandson, called Marathon Fuel to decedent's home several times during September 1992, October 1992, and from February 1, 1993 through February 17, 1993, in response to decedent's complaint to him that her heat was not working. He called Marathon every day from February 17, 1993, through February 20, 1993. Marathon Fuel serviced decedent's furnace every day from February 17, 1993 through February 20, 1993. Although Marathon alleged each day when they left that the furnace was operating properly, by the next day the house would be cold again. Bromley was advised that the furnace was working after Marathon left on February 19, 1993. He received a telephone call from decedent's housekeeper on February 20, 1993, and learned that decedent was found semi-conscious in an extremely cold house. Decedent subsequently died of hypothermia.

Plaintiffs brought this action alleging defendants were grossly negligent and violated decedent's civil rights pursuant to 42 USC § 1983 by failing to investigate decedent's calls, holding themselves out as furnace experts, reporting to a social worker that decedent was delusional and her furnace was fine, not taking decedent's complaints as seriously as those from a younger individual, providing inadequate training to police officers on handling complaints by the elderly, not requiring officers to fill out paperwork about investigations of complaints by the elderly, failing to investigate decedent's complaints about her furnace and failing to report decedent's furnace complaints to her family. Defendants filed a motion for summary disposition which was granted.

On appeal, we first address whether plaintiffs established a causal link between the failure of decedent's furnace and defendants' action or inaction. In their complaint, plaintiffs essentially argue that defendants' actions and inactions resulted in decedent's death by hypothermia. However, plaintiffs did not produce any evidence to show that defendants were notified in February 1993 that decedent was having difficulty with her furnace or that as a result of any actions by defendants, decedent's furnace malfunctioned causing her home to lose heat. Rather, Bromley was aware of the problem and called Marathon Fuel several times about problems with the furnace, including the day before decedent was found suffering from hypothermia. Therefore, even if this Court found that plaintiffs' various allegations were true, plaintiffs have not shown that any of defendants' actions relate to the malfunction of decedent's furnace and her death on February 20, 1993.

MCR 2.116(C)(10) permits summary disposition when "[e]xcept as to the amount of damages, there is no genuine issue as to any matter of law." This Court considers the factual support for the claim, giving the benefit of any reasonable doubt to the nonmoving party to determine whether a record might be developed which might leave open an issue upon which reasonable minds could differ. *Portelli v I R Const Products Co, Inc*, 218 Mich App 591, 596; 554 NW2d 591 (1996). We find that the trial court properly granted defendants summary disposition because plaintiffs have not shown any evidence to create a genuine issue as to whether defendants' action or inaction caused any injury to decedent.

In light of our determination that summary disposition was proper pursuant to MCR 2.116(C)(10), we need not address plaintiffs' claims on appeal that summary disposition was improper because defendants had a duty to protect decedent from harm, violated the due process and equal protection clauses of the US Constitution and were grossly negligent. We also decline to address plaintiffs' claim that the trial court abused its discretion by considering decedent's family's obligation to protect her during the hearing of the motion for summary disposition because there is no merit for their assertion that the sole basis for the trial court's ruling was the trial court's belief that the family had failed its obligations.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Martin M. Doctoroff